

Proposed TSCA Inventory Update Reporting Rule Amendments

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The U.S. Environmental Protection Agency ("EPA") is proposing to modify the Inventory Update Reporting ("IUR") rule under the Toxic Substances Control Act ("TSCA"). The proposed rule was published in the Federal Register on August 13, 2010 (75 Fed. Reg. 49656). Comments must be submitted on or before October 12, 2010.

The next IUR report is due in 2011 and EPA intends to issue the proposed rule as a final rule prior to the 2011 submission period, which runs from June 1, 2011 through September 30, 2011. If issued as a final rule, it would apply to 2011 submissions.

The proposed rule includes, among other things, editorial changes to correct errors or eliminate redundancy resulting from prior amendments, new and modified definitions, substantive changes in the reporting process, and changes in the type of information that must be reported.

Significant proposed changes include:

- The reporting cycle would be every four (4) years – therefore, the IUR report after the 2011 submission would be due in 2015.
 - EPA also solicits comment on changing the IUR report frequency to every three years, biennially or annually.
- The method to determine if an IUR report must be filed for *any period after the 2011 submission* would be changed – if a non-exempt chemical substance was manufactured or imported in volumes of 25,000 lbs. or more at any single site owned or controlled by the "manufacturer" in any calendar year since the last principal reporting year, an IUR report would have to be submitted in the next IUR submission period.
 - EPA also requests comment on whether some other method would result in an equally accurate picture of chemical production during the period between submissions.
 - EPA also solicits comment on whether the focus should only be on certain chemicals and, thus, EPA should require more frequent reporting only for certain chemicals.
- The 300,000 lb. threshold in 40 C.F.R. §710.52 is eliminated for reporting processing and use information if a manufacturer or importer is subject to IUR reporting. Therefore, Part III of Form U would have to be completed if a manufacturer or importer had to

submit Parts I and II of Form U.

- In connection with the proposal to eliminate the 300,000 lb. threshold in 40 C.F.R. §710.52, EPA solicits comment on whether there should be an applicability threshold for the reporting of processing and use information.
- The standard for reporting of processing and use information is changed to require reporting of all information to "known to or reasonably ascertainable to the submitter."
 - EPA is proposing to define "known or reasonably ascertainable by" the submitter to mean information that is in the possession or control of the person or information that a reasonable person similarly situated would be expected to possess, control or know. This is the standard that applies to other information that must be provided on Form U.
- The 25,000 lb. threshold is eliminated for reporting on chemical substances subject to a rule promulgated pursuant to TSCA sections 5(a)(2), 5(b)(4) or (6), subject to a TSCA section 5(e) or section 5(f) order, or subject to a judgment issued in a TSCA Section 5 or Section 7 civil action.
- The requirements relating to the assertion of claims of confidential business information or trade secrets and EPA's response to such claims would be changed.
 - If the submitter claims the chemical identity of the reportable chemical substance should be treated as confidential information but the identity of the substance is already listed on the public portion of the TSCA Inventory, EPA states it may release the information to the public without any notice to the submitter.
 - Claims of confidentiality for data associated with the processing and use of the reportable chemical substance must be asserted and substantiated at the time the report is submitted. If the required substantiation is not provided in a timely manner, EPA will consider the information not confidential for purposes of 40 C.F.R. Part 2 and TSCA and thus can be made available to the public without any notice to the submitter.
 - The proposed regulation (40 C.F.R. § 711.30(d)) contains specific questions that must be answered in order to substantiate the confidentiality claim.
 - For the 2011 and future IUR submissions, EPA will not recognize confidentiality claims with respect to a specific fact when the submitter responds that the information is not known to the submitter or is not reasonably ascertainable by the submitter
- Definitions currently found at 40 C.F.R. § 710.3 and 40 C.F.R. § 710.43 are consolidated into a new Part 711 (at § 711.3), except where there already is an appropriate definition in 40 C.F.R. § 704.3 (Part 704 contains definitions applicable to TSCA Section 8(a) reporting and record keeping requirements) or TSCA Section

3.

- In order to address toll arrangements, the proposal:
 - Amends the definition of "manufacture" to include production or processing of a chemical substance under a toll arrangement and defines the manufacturing entity and the entity contracting for such manufacture as the "manufacturer" of the chemical substance and thus, responsible for filing an IUR, if otherwise appropriate, for the chemical substance – however only one IUR must be filed; and
 - Amends the definition of "site" to make the place where the chemical substance is manufactured under the toll agreement the "site" for purposes of IUR reporting.
- The definition of "site" is amended to designate the distribution center as the "site" for manufacture of chemical substances in portable manufacturing units, such as portable manufacturing units at road construction sites is amended
- The definition of "site" is amended to designate the location of the importer's headquarters in the United States, the location of an operating unit in the United States, or, if neither of those locations exist, the address of the agent in the United States authorized to accept service of process as the "site" for purposes of IUR reporting is amended.
- Manufactured water, water from petroleum streams, and the three polymers that are currently partially exempt from the IUR requirements are completely exempted from the IUR reporting requirements.
- The submission of the Chemical Abstracts Index Name ("CA Index Name") (the name currently used to list chemicals on the TSCA Inventory) and the corresponding Chemical Abstract Services Registry Number ("CASRN") is required.
 - If the importer does not know the specific chemical name of the imported TSCA Inventory substance because the exporter or the manufacturing entity in the exporter's supply chain treats it as confidential business information, the importer provides an alternate chemical name or the trade name and must have the supplier of the confidential chemical substance provide that information directly to EPA, as part of the importer's submission, by electronic means by using EPA's web-based software.
 - If a manufacturer, including an importer, cannot provide all of the information required by section 711.15(b) relating to chemical identity because the reportable chemical substance is produced using a reactant having a specific chemical identity that the supplier treats as confidential information, the manufacturer must submit in its report to EPA all information known to or reasonably ascertainable by the "manufacturer" about the identity of the reported chemical substance and must ensure that the supplier of

the reactant provides the correct chemical name directly to EPA by electronic means using EPA's web-based software.

- Use of the name of the ultimate domestic parent company on the Form U is required. This change would make the IUR report consistent with the Toxic Release Inventory requirements.
- The manufacturer, by checking a box, is required to disclose whether a "manufactured" chemical substance, such as a by-product, is to be recycled, remanufactured, reprocessed, reused, or reworked.
- Use of EPA's web-based reporting software to complete Form U (this is not the same software available for the 2006 IUR) and EPA's Central Data Exchange ("CDX") to submit the completed Form U to EPA is required.

In addition to the proposed amendments, EPA is requesting comment on several issues, including the frequency of reporting and changing the applicability threshold from 25,000 lbs. to 10,000 lbs.

EPA is considering collecting additional exposure-related data similar to the data collected in the New Chemicals Program under TSCA Section 5 from all submitters for all reportable chemicals. The additional information EPA is considering is listed in Table 5 of the proposed rule. As an alternative, EPA is considering and solicits comment on: 1) establishing a new reporting requirement under Section 8 (a) in which it would request the information described in Table 5 for a different group of 100 chemical substances every year; and 2) using TSCA Section 11(c) subpoena authority to collect such exposure-related data when the data is not available through other means. Finally, EPA is considering and soliciting comment on whether it should require submission of exposure-related information from processors.

In the proposed rule, EPA also provides guidance and clarification concerning by-product reporting and confidentiality claims related to company name and site identity. With respect to by-products, EPA provides guidance in the rule's preamble. In addition, the docket for the rulemaking includes a draft instructional manual and other guidance materials (references 5, 20 and 21). EPA requests comment on those documents.

In the preamble, EPA states that while a submitter may make a confidentiality claim with respect to the company's name, the identity of the site or both, EPA considers the name and site identity to be separate items in all cases, including when the company name is part of the site identity or vice versa. Therefore, if the submitter intends to have EPA treat both the company name and the site identity as confidential, the submitter must make a separate claim for each and provide substantiation for each.

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